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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 648

BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN,

The Latter in His Official Capacity as Mayor-President of the City of Baton Rouge, Louisiana,

Petitioners,

versus

CONGRESS OF RACIAL EQUALITY, JOHN DOE and MARY DOE,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

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In this case* the Court is being called upon to render an academic dissertation, for no resolution of the questions

*This case is closely related to *Moore* v. *Louisiana*, in which a petition for certiorari has been filed in this Court, and *Cox* v. *Louisiana*, on appeal to this Court from the Supreme Court of Louisiana.

presented for review could alter the result reached in the Court of Appeals.

In directing dissolution of the injunction and dismissal of the complaint, the Court of Appeals made it abundantly explicit that its action was predicated upon three separate grounds:

> ". . . (1) the plaintiffs have failed to state or to show that the defendants conspired *purposefully* to deprive others of equal protection of the laws, as required by Section 1985(3); (2) there is no federal right in the city officials, individually or on behalf of the Baton Rouge citizenry, to be protected in the performance of their municipal duties, as 28 U. S. C. A. 1331 requires of an action arising under the Constitution and laws of the United States; and (3) there is no state action here such as is necessary to support a suit invoking the Fourteenth Amendment and statutes enacted to enforce that amendment." (Italics supplied by the Court of Appeals.) (Petition, page 38.)

The questions presented by the petition relate solely to what the Court of Appeals termed the "third fatal weakness in the plaintiffs' case"—the issue of "state action." No questions with respect to the first and second fatal weaknesses are presented for review. Thus, the petition does not urge that the Court of Appeals was in error in holding that the only conspiracies proscribed by Section 1985(3) are those having as their *purpose* depriving persons of Fourteenth Amendment rights. Nor do petitioners

now claim that such a purpose can be imputed to a demonstration, having as its object the securing of equal protection of the laws for all simply because the demonstration results in temporarily blocking traffic or reducing police protection in other parts of the city. Such a contention, the Court of Appeals aptly and acutely commented, "has the earmarks of a bad pun." This Court has not been asked to reverse with respect to the issue of "purpose" nor with respect to the issue of the federal interest in avoiding traffic interruptions and diminished police protection, although each of these is sufficient, by itself, to sustain the result below.

While not claiming that the Court of Appeals was without power to decide, on its own motion, whether there was a valid federal claim underlying the federal injunction, the petition seems to contend that there was something improper in the Court's having done so. Faced with the question of whether it should uphold an injunction imposing prior restraints upon the exercise of Constitutional rights to freedom of speech and assembly, it was patently not erroneous for the Court of Appeals to conclude:

> "In the circumstances, a proper regard for the federal system requires that the Court scrutinize closely the question of jurisdiction and whether on the merits the case is indeed one arising under the Constitution and laws of the United States." (*Id.* at 24.)

It was clearly correct for the Court of Appeals to direct that the injunction be dissolved and the complaint dismissed.

The questions presented for review would not alter this disposition. The petition, accordingly, should be denied.

Respectfully submitted,

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